

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

AMIR GOLESTAN

DEBTOR.

CASE NO.: 19-05657-jw

CHAPTER 11

NOTICE OF MOTION FOR RELIEF FROM STAY

TO: DEBTOR(S), TRUSTEE, AND THOSE NAMED IN THE ATTACHED MOTION:

PLEASE TAKE NOTICE THAT a hearing will be held on the attached Motion for Relief from Stay on **February 19, 2020 at 10:30 am**, at the King and Queen Building, 145 King Street, Room 225, Charleston, SC 29401.

Within fourteen (14) days after service of the attached Motion, and the Notice of Motion, accompanied by the movant's Certification of Facts and a blank Certification of Facts Form (applicable to service upon *pro se* parties only), any party objecting to the relief sought shall:

- 1) File with the Clerk of this Court a written objection to the §362 Motion;
- 2) File with the Clerk of this Court a Certification of Facts; and
- 3) Serve on the Movant items 1 & 2 above at the address shown below;
- 4) File a certificate of such service with the Clerk of this Court.

Should you fail to comply with this procedure, you may be denied the opportunity to appear and be heard on this proceeding before the court.

DATE OF ISSUANCE: January 17, 2020

MOVANT: South State Bank

By: /s/ David S. Kershaw

M. Kevin McCarrell, District Court No. 10472

David S. Kershaw, District Court No. 12903

Fox Rothschild, LLP

2 W. Washington Street, Suite 1100

Greenville, S.C. 29601

Telephone: (864) 751-7600

Attorneys for Creditor South State Bank

Greenville, South Carolina

January 21, 2020

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CASE NO.: 19-05657-jw

AMIR GOLESTAN

CHAPTER 11

DEBTOR.

MOTION FOR RELIEF FROM AUTOMATIC STAY

Creditor South State Bank, hereby moves, pursuant to 11 U.S.C § 362(e), Rule 4001 of the Federal Rules of Bankruptcy Procedure, and Local Rule 4001-1 of this Court, for relief from the automatic stay to allow South State Bank to enforce its rights in the personal property securing its claim. South State Bank states and would show to the Court that:

1. This Court has jurisdiction over of this matter pursuant to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).
2. Amir Golestan (hereinafter referred to as “Debtor”) filed a petition seeking relief pursuant to Chapter 11 of the United States Bankruptcy Code in this District on October 28, 2019.

The Loan

3. On or about March 14, 2017, for value received, the Debtor made, executed and delivered unto South State Bank a Promissory Note (the “Note”), evidencing a debt due upon a loan (the “Loan”) in the principal amount of \$135,000.00, together with interest thereon from that date at the rate specified therein.

4. In order to secure payment of the Note and all advances made thereto, according to the terms of the Note, on or about March 14, 2017, Debtor made, executed and delivered unto South State Bank a certain Consumer Security Agreement (the “Security Agreement”) encumbering personal property described as a 2016 Mercedes-Benz G-Class G63 AMG bearing VIN WDCYC7DF3GX255402 (the “Property”). The Security Agreement establishes a first priority lien upon the Property, as evidenced by the notation identifying South State Bank as a First Lienholder upon the Certificate of Title of record with the South Carolina Department of Motor Vehicles.

5. South State Bank is a secured creditor of Debtor by virtue of the Note, Security Agreement, and notation of lien upon the Certificate of Title (collectively referred to as “the Loan Documents”) which collectively encumber the Property.

Lack of Adequate Protection

6. Debtor has defaulted under the terms of the Loan Documents by failing to make timely payments as required thereunder. The Loan is in default for failure to make the August 29, 2019 payment, and all subsequent payments.

7. Upon information and belief, the Property is not currently insured against damage, harm, or destruction which could adversely affect the Property’s value and result in irreparable harm to South State Bank.

8. South State Bank’s interest in the Property is not adequately protected as evidenced by Debtor’s failure to make necessary payments under the terms of the Loan Document and to provide insurance coverage for the protection of the Property.

Lack of Equity and Necessity

9. Debtor filed Schedules and Statements with this Court on November 11, 2019. [Doc. No. 13]. In Schedule A, Debtor lists two vehicles as property of the bankruptcy estate: A 2014 Hyundai Santa Fe Limited and the Property. Debtor further indicates in Scheduled A that he owns 100% of both listed vehicles. In Schedule D, the Debtor indicates his belief that the Kelly Blue Book Value of the Property is \$80,000.00. The Debtor further indicates in Schedule D that, due to the estimated outstanding indebtedness due upon the Loan in the amount of \$85,569.00, there is no equity in the Property.

10. Upon information and belief, the Property is in the possession of Kristin Mehera Golestan, and is under her exclusive control for her use and enjoyment.

11. Upon information and belief and the reported statements of Debtor, the Property has no equity and is not necessary for the Debtor's reorganization as Debtor currently does not control, use, or enjoy the Property and has reported ownership of another vehicle that can be used for personal transportation.

12. South State Bank seeks an order granting relief from the automatic stay to exercise its state law remedies against the Property. South State Bank will not be seeking a deficiency judgment against the Debtor. However, South State Bank will pursue a determination of any deficiency due after sale of the Property in payment of the debt for the limited purpose of establishing a claim in the Debtor's personal bankruptcy for any amounts not recovered by state-court action.

13. To prevent further harm to South State Bank's interest, an Order granting relief from stay should take effect immediately, and the stay imposed by Rule 4001 of the Federal Rules of Bankruptcy procedure should not be applicable here.

WHEREFORE, South State Bank prays that:

1. The Court enter an order granting South State Bank relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) & (2) so that South State Bank may proceed with any and all remedies available under state and/or federal law that are not inconsistent with Title 11 of the United States Code;

2. Such Order be effective immediately and the stay imposed by Rule 4001 of the Federal Rules of Bankruptcy Procedure be deemed inapplicable; and

3. South State Bank be granted such other and further relief as the Court may deem just and proper.

By: /s/ David S. Kershaw
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David S. Kershaw, District Court No. 12903
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Telephone: (864) 751-7600
Attorneys for Creditor South State Bank

Greenville, South Carolina
January 21, 2020

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In the above-entitled case, in which relief is sought by Creditor South State Bank from the automatic stay provided by 11 U.S.C. § 362, I do hereby certify to the best of my knowledge the following:

1. Nature of Movant's Interest: South State Bank is a secured creditor of Debtor Amir Golestan.
2. Brief Description of Security Agreement, copy attached (if applicable): Note, Security Agreement, and Certificate of Title. (see attached)
3. Description of Property Encumbered by Stay (include serial number, lot and block number, etc.):

2016 Mercedes Benz G-Class G63
VIN: WDCYC7DF3GX255402

4. Basis for Relief (property not necessary for reorganization, debtor has no equity, property not property of estate, etc.): include applicable subsection of 11 U.S.C. § 362): Debtor has defaulted under the terms of the Loan Documents and has failed to provide adequate insurance coverage for protection of the Property, evidencing cause for relief from stay. South State Bank's interest is not adequately protected. 11 U.S.C. § 362(d)(1). Further, the Property has no equity and is not necessary for the Debtor's reorganization. 11 U.S.C. § 362(d)(2).
5. Prior Adjudication by Other Courts, copy attached (Decree of Foreclosure, Order of Possession, Levy of Execution, etc., if applicable): N/A
6. Valuation of Property, copy of Valuation attached (Appraisal, Blue Book, etc.):

\$80,000.00

\$85,569.00

\$00.00

\$00.00

\$00.00

Debtor's Schedules

7. Amount of Debtor's Estimated Equity (using figures from paragraph 6, supra):
\$00.00_____

8. Month and Year in Which First Direct Post-petition Payment Came Due to Movant (if applicable): October 2019

9. (a) For Movant/Lienholder (if applicable): List or attach a list of all post-petition payments received directly from debtor(s), clearly showing date received, amount, and month and year for which each such payment was applied.

N/A- No post-petition payments have been received directly by South State Bank.

(b) For Objecting Party (if applicable): List or attach a list of all post-petition payments included in the Movant's list from (a) above which objecting party disputes as having been made. Attach written proof of such payment(s) or a statement as to why such proof is not available at the time of filing this objection.

N/A

10. Month and Year for Which Post-petition Account of Debtor(s) is Due as of the Date of this Motion: October 2019

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CERTIFICATE OF SERVICE

I, David S. Kershaw of Fox Rothschild, LLP, Attorneys for South State Bank, do hereby certify that I have on this 21st day of January, 2020, caused to be served upon the following named parties a true and correct copy of the foregoing Notice of Motion, Motion for Relief from Automatic Stay, Certification of Facts, Certificate of Service, and a blank Certification of Facts (applicable to service upon *pro se* parties only), electronically by CM/ECF notification and/or by depositing the same within a receptacle for delivery by the United States Postal Service, sufficient postage affixed, and addressed as follows:

By U.S. Postal Service:

Amir Golestan
4639 Wilson Road
Meggett, SC 29449

By CM/ECF Notificaiton:

Elisabetta G. Gasparini on behalf of U.S. Trustee US Trustee's Office
elisabetta.g.gasparini@usdoj.gov

G. William McCarthy, Jr. on behalf of Creditor Kristin M Golestan
bmccarthy@mccarthy-lawfirm.com, sstancil@mccarthy-lawfirm.com;sbeall@mccarthy-lawfirm.com

Travis E. Menk on behalf of Creditor PNC Bank, National Association
travis.menk@brockandscott.com, scbkr@brockandscott.com;wbef@brockandscott.com

Daniel J. Reynolds, Jr. on behalf of Creditor Kristin M Golestan
dreynolds@mccarthy-lawfirm.com, sstancil@mccarthy-lawfirm.com

South State Bank
heath.barrett@southstatebank.com

J. Kershaw Spong on behalf of Creditor TBG Funding, LLC
kspong@robinsongray.com, mwhite@robinsongray.com

US Trustee's Office
USTPRegion04.CO.ECF@usdoj.gov

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